

3, 1943, for printing as public documents.

The SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from Massachusetts?

There was no objection

### § 63. Status as Privileged; Calling Up

Several types of committee reports are accorded privileged status. That is, they may be filed from the floor in the House at any time and their consideration is preferential and does not depend upon adoption of a special order reported from the Committee on Rules. One basis for this privilege of reporting at any time arises upon the precedents based upon the essential role imposed upon the Congress by the Constitution, as in the case of reports on Presidential vetoes or reports on impeachment proceedings.<sup>(3)</sup> Another basis for the privileged status of committee reports arise under the rules of the House. Such reports are of two types: (1) those raising questions of the privilege of the House under Rule IX such as reports on contempts of witnesses before committees, and (2) the reports of certain committees on

matters specified in the applicable House rule which may be brought up at any time subject to the three-day rule on availability of reports [Rule XI clause 2(1)(6)] or the one-day rule applicable to certain funding resolutions from the Committee on House Administration (Rule XI clause 5). Under Rule XI, the Committees on Appropriations, House Administration, Interior and Insular Affairs, Public Works, Rules, Standards of Official Conduct, Veterans' Affairs, and Ways and Means have had leave to report at any time although only on those matters specified in the rules of the House.<sup>(4)</sup> For example, the Committee on Veterans' Affairs has had leave to report at any time only on general pension bills.<sup>(5)</sup>

The right of reporting at any time under Rule XI clause 4 no longer grants the right of immediate consideration on the floor. Rules changes adopted since 1971, designed to give Members advance notice of floor consideration of measures, have restricted the right of immediate consideration. Now only privileged reports from

2. Sam Rayburn (Tex.).

3. See Ch. 14 (impeachment), *supra*, and Ch. 24 (vetoes), *infra*.

4. See the commentary following Rule XI clause 4(a), *House Rules and Manual* § 726 (1979).

5. See the commentary following Rule XI clause 4(a), *House Rules and Manual* § 726 (1979).

the Committee on Rules are granted the right of immediate consideration subject to the two-thirds vote required by the rules.<sup>(6)</sup>

The Committee Reform Amendments of 1974<sup>(7)</sup> incorporated into the rules the privileged status of matters reported under the Congressional Budget Act by the Committee on the Budget, but removed from the rules the privilege of measures reported by the Committee on Interior and Insular Affairs, the Committee on Public Works, the Committee on Veterans' Affairs, and the Committee on Ways and Means.<sup>(8)</sup>

### ***Reports Recommending Passage of Bill Over Veto***

#### **§ 63.1 Reports from committees, to which vetoed bills have been referred, recommending passage of such bills over a veto, are privileged.**

6. Rule XI clause 4(b), *House Rules and Manual* § 729(a) (1979). See also the commentary following Rule XI clause 4(a), *House Rules and Manual* § 726 (1979).
7. H. Res. 988, 120 CONG. REC. 34447-70, 93d Cong. 2d Sess., Oct. 8, 1974, effective Jan. 3, 1975.
8. See Rule XI clause 4(a), *House Rules and Manual* § 726 (1979).

On Aug. 17, 1951,<sup>(9)</sup> Mr. John E. Rankin, of Mississippi, submitted a privileged report from the Committee on Veterans' Affairs on H.R. 3193, involving augmented pension benefits for veterans. The committee report recommended that the bill be enacted into law, the objections of the President (who had vetoed the measure) notwithstanding. The House then passed the bill by the necessary two-thirds majority.

The exchange went as follows:

Mr. RANKIN: Mr. Speaker, I submit a privileged report from the Committee on Veterans' Affairs on the bill (H.R. 3193) to establish a rate of pension for aid and attendance under part III of Veterans' Regulation No. 1 (a), as amended.

The Clerk read as follows: . . .

The SPEAKER:<sup>(10)</sup> The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be determined by the yeas and nays. . . .

So, two-thirds having voted in favor thereof, the bill was passed, the objections of the President to the contrary notwithstanding.

On Sept. 25, 1940,<sup>(11)</sup> Mr. Andrew J. May, of Kentucky, by di-

9. 97 CONG. REC. 10197, 10202, 82d Cong. 1st Sess.
10. Sam Rayburn (Tex.).
11. 86 CONG. REC. 12615-23, 76th Cong. 3d Sess.

rection of the Committee on Military Affairs, called up a privileged report on H.R. 3840, which had been referred to the committee after a Presidential veto. The House ultimately failed to override the veto on the bill, which involved the status of bandmasters in the U.S. Army.

**§ 63.2 A privileged report submitted by the Committee on the Judiciary on a vetoed bill referred to it recommended passage of the bill, the objections of the President to the contrary notwithstanding.**

On Aug. 5, 1940,<sup>(12)</sup> Mr. Hatton W. Sumners, of Texas, submitted a privileged report on H.R. 3233, entitled "An act to repeal certain acts of Congress (pocket vetoed)". The report recommended the passage of the bill over the President's veto. The bill in question proposed the repeal of pocket-vetoed bills. Mr. Sumners explained that the committee desired to prevent certain bills from becoming law in the event that the Supreme Court determined that the President's use of the pocket veto in a number of instances had been invalid.

The bill did not receive the two-thirds vote required for passage.

12. 86 CONG. REC. 9885-90, 76th Cong. 3d Sess.

***Reports on Impeachment***

**§ 63.3 Adverse reports from the Committee on the Judiciary on impeachment proceedings are privileged.**

On Mar. 24, 1939,<sup>(13)</sup> Mr. Sam Hobbs, of Alabama, by direction of the Committee on the Judiciary presented a privileged report on House Resolution 67, dealing with impeachment proceedings against Secretary of Labor Frances Perkins. Mr. Hobbs stated that the committee had been unanimously adverse to the resolution, as reflected in the report. He then moved that the resolution be laid on the table and the House agreed to the motion.

***Questions Involving the Privilege of the House***

**§ 63.4 A committee report is privileged where it takes up a question involving the privileges of the House. Thus, a committee report relating to the refusal of a witness to produce certain documents, as ordered, is privileged.**

On Feb. 2, 1966,<sup>(14)</sup> shortly after the House convened, Speaker

13. 84 CONG. REC. 3273, 76th Cong. 1st Sess.

14. 112 CONG. REC. 1742, 89th Cong. 2d Sess.

John W. McCormack, of Massachusetts, recognized Edwin E. Willis, of Louisiana, Chairman of the House Committee on Un-American Activities, who stated:

Mr. Speaker, I rise to a question of the privilege of the House and by direction of the Committee on Un-American Activities, I submit a privileged report (Reps. No. 1214).

The Clerk then proceeded to read the report which was one of seven similar reports<sup>(15)</sup> to be considered that day. Each report documented the failure of an alleged member of the Ku Klux Klan to comply with a subpoena duces tecum issued by the Committee on Un-American Activities which required the production of books, documents, correspondence, and memoranda relating to the organization. Each report was, in turn, followed by the submission of a privileged resolution directing the Speaker of the House to certify the report of the committee to the U.S. Attorney for the District of Columbia so that each individual could be "proceeded against in the manner and form provided by law."<sup>(16)</sup>

15. The committee also submitted H. Rept. No. 89-1242 (*id.* at p. 1763), H. Rept. No. 89-1243 (*id.* at p. 1770), H. Rept. No. 89-1244 (*id.* at p. 1784), H. Rept. No. 89-1245 (*id.* at p. 1793), H. Rept. No. 89-1246 (*id.* at p. 1801), and H. Rept. No. 89-1247 (*id.* at p. 1808).

16. For a discussion of the subject of privilege, generally, see Ch. 11, *supra*.

### ***Report on Refusal of Witness to Testify***

#### **§ 63.5 Reports of the standing Committee on Un-American Activities as to the refusal of certain witnesses to produce books and papers under a subpoena duces tecum were privileged.**

On Mar. 28, 1946,<sup>(17)</sup> Mr. John S. Wood, of Georgia, by direction of the Committee on Un-American Activities, presented a privileged report which recited that Dr. Edward Barksy and other named members of the executive board of the Joint Anti-Fascist Refugee Committee had deprived the Committee on Un-American Activities of the opportunity to inspect books, papers, and other materials requested in a subpoena duces tecum, which actions constituted contempt of the House of Rep-

17. 92 CONG. REC. 2743-53, 79th Cong. 2d Sess.

See also 100 CONG. REC. 12825-38, 83d Cong. 2d Sess., July 30, 1954; 98 CONG. REC. 3756-73, 82d Cong. 2d Sess., Apr. 8, 1952; 96 CONG. REC. 12284-86, 81st Cong. 2d Sess., Aug. 11, 1950; 96 CONG. REC. 12234-48, 81st Cong. 2d Sess., Aug. 10, 1950; and 93 CONG. REC. 1127-37, 80th Cong. 1st Sess., Feb. 18, 1947.

Contempt proceedings instituted against recalcitrant witnesses are discussed in Ch. 15, *supra*.

representatives. After the Clerk read the report, Mr. Wood offered a privileged resolution, House Resolution 573, that provided that the report be certified to the U.S. Attorney for the District of Columbia to the end that the named persons be prosecuted. After argument, the resolution was amended so as to describe only the individual who had appeared before the House committee and refused to respond in the manner directed. The resolution was then agreed to.

**§ 63.6 A committee report from the Committee on Interstate and Foreign Commerce relating to the refusal of a witness to testify was privileged.**

On Aug. 13, 1958,<sup>(1)</sup> Mr. Oren Harris, of Arkansas, by direction of the Committee on Interstate and Foreign Commerce, submitted a privileged report, House Report No. 85-2580, recommending that a contempt citation be issued against Bernard Goldfine. Shortly afterward, Mr. Harris offered a resolution, House Resolution 684, that certified the committee report to the U.S. Attorney for appropriate contempt proceedings. The

House subsequently agreed to the resolution.

**§ 63.7 Report by a special committee authorized to make an investigation stating that a witness had refused to testify before the committee was privileged.**

On Mar. 29, 1940,<sup>(2)</sup> Mr. Martin Dies, Jr., of Texas, by direction of the Special Committee to Investigate Un-American Activities, presented a privileged report, House Report No. 76-1900, stating that the committee had caused to be issued a subpoena directing James H. Dolsen to appear and testify before the committee with records regarding the Communist Party and its activities, and that Mr. Dolsen had refused to testify as directed, such refusal being a willful and deliberate violation of the subpoena. The report stated that the witness was in contempt of the House of Representatives.

Speaker William B. Bankhead, of Alabama, ordered the report to be printed and directed the Clerk to report the resolution, House Resolution 446, certifying the report, together with all of the facts in connection with it, under the seal of the House of Representa-

1. 104 CONG. REC. 17361-86, 85th Cong. 2d Sess.

2. 86 CONG. REC. 3694, 3695, 76th Cong. 3d Sess.

tives, to the U.S. Attorney for the District of Columbia, for appropriate proceedings. The resolution was agreed to.

**§ 63.8 Reports from committees on the refusal of witnesses to testify, if not called up immediately, are referred to the House Calendar and ordered printed.**

On Apr. 8, 1952,<sup>(3)</sup> Mr. Robert L. Doughton, of North Carolina, by direction of the Committee on Ways and Means, submitted a privileged report, Honse Report No. 82-1748, which was referred to the House Calendar and ordered printed. The report cited Henry W. Grunewald for failing and refusing to answer pertinent questions propounded to him and produce papers, books, and other documents requested by committee subpoena. The committee had been investigating allegations that Mr. Grunewald wrongfully intervened in tax cases and maintained close personal relations with several Internal Revenue Service officials.

***Reports Privileged Under Specific Provisions of House Rules***

**§ 63.9 Privileged reports have been made from the floor on**

3. 98 CONG. REC. 3756-73, 82d Cong. 2d Sess.

**bills providing for statehood; and where the Committee on Interior and Insular Affairs reported a privileged bill favoring the admission of a new state [Alaska] and the bill contained matter incidental to its main purpose, the privileged status was not destroyed.**

On June 25, 1957,<sup>(4)</sup> Mr. Leo W. O'Brien, of New York, submitted a privileged report providing for the admission of a new state into the Union. It was reported in the following manner:

Mr. O'Brien of New York from the Committee on Interior and Insular Affairs submitted a privileged report (Reps. No. 624) on the bill (H.R. 7999) to provide for the admission of the State of Alaska into the Union, which was referred to the Union Calendar and ordered to be printed.

On May 21, 1958,<sup>(5)</sup> Mr. Wayne N. Aspinall, of Colorado, by direction of the Committee on Interior and Insular Affairs, moved that the House resolve itself into the Committee of the Whole for the consideration of H.R. 7999, providing for the admission of Alaska into the Union. Mr. Clarence Cannon, of Missouri, then made a

4 103 CONG. REC. 10200, 85th Cong. 1st Sess.

5. 104. CONG. REC. 9212-17, 85th Cong. 2d Sess.

point of order that the bill was not privileged and that accordingly, the motion was not in order at that time. Mr. Cannon argued that, if the bill was privileged at all, it was privileged under Rule XI,<sup>(6)</sup> authorizing the Committee on Interior and Insular Affairs to report a bill for admission of a new state. Mr. Cannon argued that the bill had to conform in every respect with the rule or the privilege was destroyed. Mr. Cannon, Mr. John Taber, of New York, and Mr. Howard W. Smith, of Virginia, all argued against the privileged status of the bill on the basis of early precedents expressing the principle that "the presence of matter not privileged with privileged matter destroys the privileged character of the bill."<sup>(7)</sup> In response, Mr. Arthur L. Miller, of Nebraska, and Mr. Leo W. O'Brien, of New York, argued that the other matters contained in the bill were necessarily incidental to the main purpose of the bill and that, were the rule given the narrow construction urged by Mr. Cannon and the others, it would be impossible in modern times to bring a statehood bill to the floor under the rule.

In overruling the point of order, Speaker Sam Rayburn, of Texas,

observed that some of the precedents cited by the Members in support of their arguments did not apply to statehood bills. He further stated:

The bill before us is one to provide for the admission of the State of Alaska into the Union. Upon a close examination of the bill it will be found that all of the provisions contained therein are necessary for the accomplishment of that objective. It may be argued that some of them are incidental to the main purpose, but as long as they tend toward the accomplishment of that end, such incidental purposes do not destroy the privilege of the Committee on Interior and Insular Affairs to report and call up the pending bill.

It may be said, therefore, that where the major feature—and the Chair hopes the Members will listen to this—that where the major feature of the bill relates to the admission of a new State, lesser provisions incidental thereto do not destroy its privilege when reported by the Committee on Interior and Insular Affairs, and, therefore, for these and many other reasons, the Chair overrules the point of order.

*Parliamentarian's Note:* Generally, the inclusion of nonprivileged matter in a bill otherwise privileged destroys the privileged status of the bill, as where provisions of a bill relate to subjects other than the subject which is specifically accorded privileged status under House rules. But seemingly nonprivileged provi-

6. See Rule XI clause 22, *House Rules and Manual* §726 (1973).

7. 4 Hinds' Precedents §§4622, 4624, 4633, 4640, 4643; 8 Cannon's Precedents §2289.

sions do not destroy the privileged status of the bill if they are incidental and necessary to the accomplishment of a privileged purpose of the bill. See the discussion in §63.13, *infra*.

***Doctrine of Privileged Reports  
May Extend to Senate Bills***

**§ 63.10 A special committee having been given the power to study a subject and report to the House, and authorized to report certain bills and resolutions as privileged, may report Senate bills as well as House bills under the privileged status given. Moreover, where a Senate bill is reported by such committee with a committee amendment containing language of House bills previously passed by the House (a motion to reconsider having been tabled), the committee amendment does not comprise such unprivileged matter as would destroy the privileged status given the Senate bill.**

On Mar. 31, 1938,<sup>(8)</sup> points of order were made against consideration of a Senate bill<sup>(9)</sup> respecting

governmental reorganization. The bill had been reported by a special committee which, under House Resolution 60, was given the privilege of reporting at any time with respect to certain matters. A point of order by Mr. Samuel B. Pettengill, of Indiana, was based in part on a contention that the Senate bill contained unprivileged matter and that therefore the bill's privileged status was destroyed. In a subsequent point of order against the Senate bill, Mr. Gerald J. Boileau, of Wisconsin, raised a question as to whether the authorizing resolution had given privileged status only to House bills reported by the committee, and not to Senate bills. The proceedings were as follows:

MR. PETTENGILL: Mr. Speaker, I make a point of order against S. 3331, Union Calendar 739, Report 2033, reported March 30, 1938, from the Select Committee on Government Organization.

The point of order is that the bill includes matters not privileged and the inclusion of such nonprivileged matters destroys the privilege of the whole.

. . .

This House passed H.R. 7730 July 27, 1937, during the present Congress. The Record and the Journal of the House show that a motion was made to reconsider the vote by which the House passed H.R. 7730, and that said motion to reconsider was laid upon the table. . . .

Despite this action finally disposing of the subject matter of H.R. 7730, S.

8. 83 CONG. REC. 4474-77, 75th Cong. 3d Sess.

9. S. 3331.



3331, reported by the Select Committee on Government Organization yesterday, is again reported in haec verba in the form in which it passed the House on July 27, 1937, under title 2, section 201, of S. 3331.

For this reason, title 2, section 201, is nonprivileged matter, and the inclusion thereof under the rules of the House destroys the privilege of the whole of S. 3331 as reported.

Similarly, the House on August 13, 1937, during the present Congress, passed H.R. 8202, and the Record and Journal of the House show that on August 13 last a motion was made to reconsider the vote by which said H.R. 8202 passed the House, and that said motion to reconsider was laid on the table. . . .

An examination of S. 3331 will show that despite this action taken by the House on August 13, 1937, the same subject matter as included in H.R. 8202 in haec verba is contained in S. 3331. . . .

The matter thus described in S. 3331 having heretofore been finally disposed of by the House, at least pending a conference with the Senate, it is not within the privilege of the Select Committee on Government Organization to include the same in S. 3331, and that the inclusion of the same destroys the privilege of all of S. 3331. . . .

Putting aside, for the moment, the technical question of privilege, I make a further point of order that S. 3331 with reference to the matters therein set forth which I have above described contains matter which it is not within the power of the Select Committee on Government Organization, or any committee of the House, or any member

thereof, or the House itself, to report or to receive or to take any committee or legislative action thereon. . . .

. . . For the reason as above stated, that by taking the action to which I have referred with reference to H.R. 7730 on July 27, 1937, and H.R. 8202 on August 13, 1937, this House has divested itself of any further authority, at least at the present time, to take any legislative action whatsoever with respect to the subject matter therein set forth. . . .

THE SPEAKER: <sup>(10)</sup> The Chair is ready to rule on the points of order raised by the gentleman from Indiana.

The gentleman from Indiana makes two points of order against the consideration of Senate bill 3331. The first point of order is based upon the ground that the select committee of the House of Representatives appointed to deal with this matter does not have authority to report a bill of this character. Under these circumstances, in order that the whole situation may be presented to the House, in the opinion of the Chair, it is necessary to incorporate in the ruling at least a part of House Resolution 60 specifically setting up this select committee and designating certain powers that it might have the right to exercise. The Chair quotes from that resolution the following language:

*Resolved*, That the Speaker of the House of Representatives be, and he is hereby, authorized to appoint a select committee of seven Members of the House to be known as the Select Committee on Government Organization, for the purpose of considering and reporting upon the subject matter contained in the message of the

10. William B. Bankhead (Ala.).

President of the United States of January 12, 1937. All bills and resolutions introduced in the House proposing legislation concerning reorganization, coordination, consolidation, or abolition of, or reduction of personnel in, organizations or units in the Government shall be referred by the Speaker to the said Select Committee on Government Organization. The said Select Committee on Government Organization is hereby authorized to report to the House at any time by bill or otherwise with recommendations upon any matters covered by this resolution; and any bill or resolution so reported shall be placed upon the calendar and have a privileged status. . . .

So it appears clear to the Chair that under the special authority granted by the House itself to this select committee they were given the privilege to report at any time, either by bill or otherwise, any matters covered by the recommendations of the President of the United States in the message referred to in the resolution. While it is true that at a former session of the Seventy-fifth Congress two separate bills were passed by the House and sent over to the Senate for the consideration of that body, yet that, in the opinion of the Chair, is not the direct parliamentary problem here presented.

Assuming, and the Chair thinks it is clear, that the committee had the right to make any report that it saw fit upon these problems, the question here is whether or not the select committee had the right under this power delegated by the House and under general parliamentary practice in addition to these powers to report a bill passed by the Senate and to which the House committee has stricken out all after the enacting clause and submitted, as

is the case here, an amendment in the nature of a substitute for the Senate bill. The Chair is clearly of the opinion that the committee had that authority. Here is a bill sent over by the Senate and referred to this select committee, and under the jurisdiction conferred they have reported back to this House a Senate bill with one amendment. The whole action of the select committee constitutes an amendment and only one amendment to a Senate bill; and despite the fact that the House may have heretofore passed in a former session two bills touching upon certain phases of the President's recommendation, the Chair is of the opinion that this would not prevent the select committee from reporting an amendment to a Senate bill. . . .

The Chair, therefore, overrules the points of order.

Subsequently, a point of order was made by Mr. Boileau, as follows:

MR. BOILEAU: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. BOILEAU: Mr. Speaker, I make a point of order against the consideration of this bill at the present time. I grant, Mr. Speaker, that the committee has jurisdiction of the subject matter contained in the Senate bill.

I make the point of order, however, that the resolution setting up this committee and giving the committee privileged status gave privileged status only to House bills and not to Senate bills, and therefore the bill cannot be brought up in this manner.

THE SPEAKER: The Chair just a few moments ago read into the Record the

comprehensive powers of the select committee. The Chair is of the opinion that the point of order is not well taken, and, therefore, overrules the point of order.

***Reports on Resolution of Disapproval***

**§ 63.11 A report from the Committee on Government Operations on a resolution disapproving a reorganization plan is filed through the hopper and not from the floor as privileged.**

On Feb. 15, 1962,<sup>(11)</sup> pursuant to Rule XIII clause 2, Mr. William L. Dawson, of Illinois, delivered to the Clerk the report of the Committee on Government Operations, House Report No. 87-1360, on House Resolution 530, which resolution disapproved of Reorganization Plan No. 1 of 1962, relating to the establishment of a Department of Urban Affairs.

*Parliamentarian's Note:* The privileged consideration of similar resolutions of disapproval which is explicitly provided by law is to be distinguished from privileged reports filed pursuant to the standing rules of the House. In the former case, privilege for consideration derives directly from law and the reports need not be filed

11. 108 CONG. REC. 2263, 87th Cong. 2d Sess.

from the floor to preserve that privilege. In the latter case, privileged reports must be filed from the floor in order to preserve their privileged consideration, since House rules do not explicitly permit privileged consideration regardless of the mode of filing.

***Reports on Nomination of Vice President***

**§ 63.12 The report of the Committee on the Judiciary on the nomination of Gerald R. Ford to be Vice President was filed through the hopper and not from the floor as privileged.**

On Dec. 4, 1973,<sup>(12)</sup> Mr. Peter W. Rodino, Jr., of New Jersey, Chairman of the Committee on the Judiciary, delivered House Report No. 93-695 on House Resolution 735 as a nonprivileged matter, pursuant to House Rule XIII clause 2. The resolution confirmed the nomination of Gerald R. Ford, of Michigan, to be Vice President of the United States. The report was delivered to the Clerk for

12. 119 CONG. REC. 39419, 93d Cong. 1st Sess.

See also 120 CONG. REC. 40587, 93d Cong. 2d Sess., Dec. 17, 1974, where Mr. Rodino filed H. Rept. No. 93-1609 on H. Res. 1511, confirming Nelson A. Rockefeller as Vice President of the United States.

printing and reference to the House Calendar.

***Effect of Inclusion of Nonprivileged Matter***

**§ 63.13 The inclusion of non-privileged matter in a bill otherwise privileged under the rules destroys the privileged status of the entire bill.**

On Apr. 8, 1935,<sup>(13)</sup> after Mr. Joseph J. Mansfield, of Texas, moved that the House resolve itself into the Committee of the Whole for the consideration of H.R. 6732, authorizing the construction of certain public works on rivers and harbors, Mr. Bertrand H. Snell, of New York, made a point of order against the motion. Mr. Snell contended that the motion was not in order because the bill was not privileged.

Mr. John J. O'Connor, of New York, in response to the point of order, conceded that the bill should have contained only matters relating to rivers and harbors, and not matters relating to canals and artificial waterways, to be in strict compliance with the privilege. He also acknowledged that there were precedents that held that "the presence in a bill, otherwise privileged, of matters

not privileged destroys the privileged status of the whole bill."<sup>(14)</sup>

Upon Mr. Mansfield's insistence that the Speaker rule on the point of order, Speaker Joseph W. Byrns, of Tennessee, held that the motion was not in order, as the bill contained matters exceeding the scope of the privilege. The Speaker also noted that the bill had not been reported as privileged from the floor of the House, but rather through the hopper as an ordinary bill.

The proceedings were as follows:

MR. SNELL: Mr. Speaker, I desire to make a point of order against the motion.

THE SPEAKER: The gentleman will state it.

MR. SNELL: I make the point of order against the motion of the gentleman from Texas [Mr. Mansfield] on the ground that this is not a privileged bill, and therefore the motion is not in order. I do this not because I am opposed to the bill, because I am for it, but in order to keep the Record and the precedents of the House intact relative to the consideration of a river and harbor bill.

As a matter of fact, the Chairman of the Rules Committee and I had a word or two about this bill Saturday night. Originally, river and harbor bills were privileged bills, but in those days they were confined to river and harbor projects alone. In later years all of

13. 79 CONG. REC. 5250, 5251, 74th Cong. 1st Sess.

14. See 4 Hinds' Precedents § 4622.

these river and harbor bills have contained various other matters, such as channels, canals, and artificial waterways, which are not privileged matter. Of course, the presence of unprivileged matter in a bill makes the bill itself unprivileged. If I remember correctly, the present distinguished Speaker made a ruling on this very same proposition some 12 or 15 years ago when he was acting as Chairman of Committee of the Whole, and as a further argument to sustain my position, I respectfully call attention of the Speaker to that decision.

I would like to say further that as far as I am concerned, if the Speaker sustains the point of order, which I believe he will, if the gentleman from Texas will ask unanimous consent to call up this bill, I doubt if there will be any opposition to considering it at this time. The point I am making now is simply for the purpose of maintaining the rules of the House, and not because I have any opposition to the bill.

MR. O'CONNOR: Mr. Speaker, I should like to reply to the point of order, in order to keep the record clear. . . .

Now, under clause 45 of rule XI of the House, bills reported by the Committee on Rivers and Harbors for "the improvement of rivers and harbors" are privileged, along with reports from the Rules Committee, reports of the Elections Committees, general appropriation bills, bills from the Public Lands Committee relating to forfeiture of land grants to railroads, and so forth, reports from the Accounts Committee pertaining to the contingent fund of the House, reports on enrolled bills, reports from the Committee on Territories admitting new Territories

as States to the Union, reports from the Invalid Pensions Committee reporting general pension bills, and reports from the Joint Committee on Printing. I think I have covered all the privileged reports. If not, I shall include them later in my remarks.

Under the rule, the gentleman from New York is correct in the strict sense, in that the bill reported from the Committee on Rivers and Harbors must relate only to rivers and harbors. This ruling is sustained by the following precedent: On January 11, 1919, at page 1263 of the Record, the present distinguished Speaker, then presiding as Chairman of the Committee of the Whole House on the state of the Union, ruled that a Rivers and Harbors Committee report was not privileged because it contained canals and artificial waterways. It has also been held that the presence in a bill, otherwise privileged, of matters not privileged destroys the privileged status of the whole bill (Hinds' Precedents, vol. IV, sec. 4622, etc.).

I am willing to concede to the gentleman from New York [Mr. Snell] that this bill does in fact contain provisions relating to canals and creeks and artificial, and perhaps undiscovered, waterways, so if the gentleman should press his point of order, the bill would not be privileged. In view of that situation, however, if the point of order is pressed, the Rules Committee is prepared with a rule to meet the situation. . . .

THE SPEAKER: Clause 45 of rule XI, as it relates to the Committee on Rivers and Harbors, reads as follows, under the heading of Privileged Reports.

The Committee on Rivers and Harbors, bills authorizing the improvement of rivers and harbors.

The bill which has been presented to the House not only relates to rivers and harbors but provides for other waterways.

There are quite a number of provisions in the bill, which it is unnecessary to point out, providing for inland waterways; for instance, from the Delaware River to the Chesapeake Bay, the improvement of the Cape Cod Canal, and other provisions quite numerous which, in the opinion of the Chair, takes the bill from under the privilege provided in the rules.

The Chair feels constrained to follow the precedents heretofore established and the plain letter of the rule the Chair has read, which applies only to bills relating to rivers and harbors exclusively. In addition to this, the Chair will state that the Chair is informed that this bill was not presented to the House as privileged bills are, but was reported through the basket, rather than from the floor of the House.

The Chair therefore sustains the point of order.

Mr. Mansfield then sought and obtained unanimous consent for the immediate consideration of the bill.

*Parliamentary Note:* In this instance, provisions of the bill related to subjects other than the subjects specifically accorded privileged status by rule, and therefore were clearly outside the scope of the privilege. This should be distinguished from the situation in which a bill contains seemingly nonprivileged provisions which are incidental to the main purpose

of the bill, but which are necessary to or tend substantially toward the accomplishment of such purpose. It has been held, for example, under a rule that gave privilege to reports from the Committee on Interior and Insular Affairs relating to admission of new states, that the rule permitted inclusion in a bill of matters incidental to the bill's privileged purpose so long as "they tend toward the accomplishment of that end." In such a case, the incidental matter does not destroy the privilege. [See the ruling of Speaker Sam Rayburn (Tex.) with respect to H.R. 7999, a bill to provide for the admission of Alaska into the Union at §63.9, *supra*.]

### ***Calling Up Privileged Resolution on Same Day Reported***

**§ 63.14 Prior to the adoption of the present "three-day lay-over rule," a report from a committee entitled to make privileged reports under the rules could be called up for consideration on the same day reported, and unanimous consent was not required.**

On June 16, 1965,<sup>(15)</sup> Mr. Samuel N. Friedel, of Maryland, by di-

15. 111 CONG. REC. 13799, 89th Cong. 1st Sess. Under consideration was H. Res. 416, which authorized payment

rection of the Committee on House Administration, called up House Resolution 416, and asked for its immediate consideration. Mr. H. R. Gross, of Iowa, then made a parliamentary inquiry of Speaker John W. McCormack, of Massachusetts. The following exchange took place.

MR. GROSS: Does the immediate consideration of this resolution require unanimous consent?

THE SPEAKER: The Chair will advise the gentleman from Iowa that this is a privileged report from the Committee on House Administration.

The question is on the committee amendments.

However, in 1970 the House adopted the so-called "three-day layover rule."<sup>16</sup> This rule essentially limits the right of immediate consideration by providing that, although privileged reports can still be reported at any time, the measure or matter reported cannot be considered until three days, exclusive of Saturdays, Sundays, or legal holidays, have passed, except for resolutions reported by the Committee on Rules

from the contingent fund for employment of student congressional interns.

16. See the present Rule XI clause 2(l) (6), *House Rules and Manual* §715 (1979).

For general discussion, see Ch. 21, *infra*.

making in order the consideration of a bill, resolution, or other order of business, and except for committee funding resolutions reported by the Committee on House Administration subject to the one-day layover requirement of Rule XI clause 5. This rule change, brought about by the Legislative Reorganization Act of 1970,<sup>(17)</sup> affords Members a period of time to analyze and evaluate the matter before consideration thereof on the floor of the House. The three-day period begins to run when the printed report is available to Members after filed, and follows the separate three-day period of time granted Members to prepare and file supplemental, additional, and minority views for inclusion with the committee report.<sup>(18)</sup>

**§ 63.15 A two-thirds vote is required to call up for consideration a resolution with its report from the Committee on Rules on the same day it is reported.**

On July 2, 1960,<sup>(19)</sup> Mr. Richard Bolling, of Missouri, from the

17. Pub. L. No. 91-510, 84 Stat. 1140 (Oct. 26, 1970).

18. H. Rept. No. 91-1215, 116 CONG. REC. 20276, 91st Cong. 2d Sess., June 17, 1970.

19. 106 CONG. REC. 15775-90, 86th Cong. 2d Sess. See also 112 CONG.

Committee on Rules, reported a privileged resolution (H. Res. 596 with accompanying House Report No. 862085), which resolution and report were referred to the House Calendar and ordered to be printed. Mr. Bolling then called up the resolution and asked for its immediate consideration. The resolution provided that immediately upon its adoption, the bill, H.R. 12740, making supplemental appropriations for the fiscal year ending June 30, 1961, and for other purposes, with the Senate amendments thereto, be taken from the Speaker's table and the Senate amendments be considered in the House.

Speaker Sam Rayburn, of Texas, then put the question as to whether the House would then consider the resolution and the Speaker announced that the yeas had it. Mr. H. R. Gross, of Iowa, then made a parliamentary inquiry as to whether consideration of the resolution required unanimous consent. The Speaker responded that a two-thirds vote was required.<sup>(20)</sup>

REC. 10021, 10022, 89th Cong. 2d Sess., May 9, 1966, where the House, by a two-thirds vote, agreed to consider a report from the Committee on Rules on the same day it was reported [H. Res. 846]; and 106 CONG. REC. 17673, 86th Cong. 2d Sess., Aug. 25, 1960 [H. Res. 624].

20. For precedents involving the privileged status of reports from the Committee on Rules, see § 55, *supra*.

**§ 63.16 Since a report on the contemptuous conduct of a witness before a House committee involves the implied constitutional power of the House and its authority under Rule IX to dispose directly of questions affecting the dignity and integrity of House proceedings, such report is privileged for consideration immediately upon presentation to the House; a resolution directing the Speaker to certify to the U.S. Attorney the refusal of the witness to respond to a subpoena issued by a House committee may be offered from the floor as privileged, and the accompanying committee report may be presented to the House without regard to the three-day availability requirement for other reports.**

On July 13, 1971,<sup>(21)</sup> Speaker Carl Albert, of Oklahoma, made a ruling that a report relating to the refusal of a witness to respond to a subpoena duces tecum issued by a committee gives rise to a question of the privileges of the House and, under Rule IX, may be considered on the same day reported notwithstanding the requirement of then clause 27(d)(4) of Rule XI

21. 117 CONG. REC. 24720-23, 92d Cong. 1st Sess.



[see Rule XI clause 2(l)(6), *House Rules and Manual* §715 (1979)] that reports from committees be available to Members for at least three calendar days prior to their consideration.

The proceedings were as follows:

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I rise to a question of the privilege of the House, and I submit a privileged report (Report No. 92-349). . . .

MR. [SAM M.] GIBBONS (of Florida): Mr. Speaker, I rise to object to the consideration of this matter at this time in that I believe that it violates clause 27, subparagraph (d)(4) of rule XI of the Rules of the House of Representatives. . . .

Mr. Speaker, I think it would be best if I read just a portion of the rule, and this rule reads as follows:

A measure or matter reported by any committee (except the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, and the Committee on Standards of Official Conduct) shall not be considered in the House unless the report of that committee upon that measure or matter has been available to the Members of the House for at least three calendar days (excluding Saturdays, Sundays, and legal holidays) prior to the consideration of that measure or matter in the House. . . .

This subparagraph shall not apply to—

(A) Any measure for the declaration of war, or the declaration of a national emergency, by the Congress; and

(B) any executive decision, determination, or action which would be-

come, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress. . . .

Mr. Speaker, I realize that some may say a matter of this sort is a matter of privilege and, therefore, is excepted from the rule. It is my contention, Mr. Speaker, that the matter of privilege was specifically not excluded from the requirement of a 3-day lay-over for the printing of the report but that the Committees on Appropriations, House Administration, Rules, and Standards of Official Conduct—those being the committees that generally deal with matters of privilege—were set down under specific exception and that it was never intended that citations such as this could be considered in such a preemptive type of procedure as is now about to take place. . . .

MR. STAGGERS: Mr. Speaker, rule IX provides that “Questions of privilege shall be, first, those affecting the rights of the House collectively”—as the gentleman from New York has just read—“its safety, dignity and the integrity of its proceedings.”

Privileges of the House includes questions relating to those powers to punish for contempt witnesses who are summoned to give information.

House Rule 27(d) of rule XI, the so-called 3-day rule, clearly does not apply to questions relating to privileges of the House. The rule applies only to simple measures or matters reported by any committee. It excludes matters arising from the Committees on Appropriations, House Administration, Rules, and Standards of Official Conduct.

It is clear that the terms “measure” or “matter” as used in rule 27(d) do not apply to questions of privilege.

To apply it in such a way would utterly defeat the whole concept of the question of privilege.

Too, a privileged motion takes precedence over all other questions except the motion to adjourn.

The fact that the 3-day rule excludes routine matters from the Appropriations, Administration, Rules, and Standards of Official Conduct Committees clearly shows that the 3-day rule does not apply to privileged questions.

If the rule were meant to apply to questions of privilege, it surely would not make exceptions for routine business coming from regular standing committees.

THE SPEAKER: . . . The Chair has studied clause 27(d)(4) of rule XI and the legislative history in connection with its inclusion in the Legislative Reorganization Act of 1970. That clause provides that "a matter shall not be considered in the House unless the report has been available for at least 3 calendar days."

The Chair has also examined rule IX, which provides that:

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings . . .; and shall have precedence of all other questions, except motions to adjourn.

Under the precedents, a resolution raising a question of the privileges of the House does not necessarily require a report from a committee. Immediate consideration of a question of privilege of the House is inherent in the whole concept of privilege. When a resolution is presented, the House may then make a determination regarding its disposition.

When a question is raised that a witness before a House committee has been contemptuous, it has always been recognized that the House has the implied power under the Constitution to deal directly with such conduct so far as is necessary to preserve and exercise its legislative authority. However, punishment for contemptuous conduct involving the refusal of a witness to testify or produce documents is now generally governed by law—Title II, United States Code, sections 192–194—which provides that whenever a witness fails or refuses to appear in response to a committee subpoena, or fails or refuses to testify or produce documents in response thereto, such fact may be reported to the House. Those reports are of high privilege.

When a resolution raising a question of privilege of the House is submitted by a Member and called up as privileged, that resolution is also subject to immediate disposition as the House shall determine.

The implied power under the Constitution for the House to deal directly with matters necessary to preserve and exercise its legislative authority; the provision in rule IX that questions of privilege of the House shall have precedence of all other questions; and the fact that the report of the committee has been filed by the gentleman from West Virginia as privileged—all refute the argument that the 3-day layover requirement of clause 27(d)(4) applies in this situation.

The Chair holds that the report is of such high privilege under the inherent constitutional powers of the House and under rule IX that the provisions of clause 27(d)(4) of rule XI are not applicable.

Therefore, the Chair overrules the point of order.

## § 64. Supplemental, Minority, and Additional Views

The procedure for the filing of supplemental and other views was substantially revised by the Legislative Reorganization Act of 1970.<sup>(22)</sup> As stated in the report<sup>(23)</sup> of the Committee on Rules on H.R. 17654 (which became the Legislative Reorganization Act of 1970), the act amended House Rule XI clause 27(d) by adding to that clause a new subparagraph (3),<sup>(24)</sup> which specifically provided for the filing of supplemental, minority, and additional views for inclusion in reports of standing, select, and special committees of the House. The report states:

The proposed new subparagraph (3) provides that, if, at the time any measure or matter is approved and ordered reported by any standing, select, or special committee of the House, any member of the committee gives notice of his intent to file supplemental, mi-

nority, or additional views with respect to that measure or matter for inclusion in the committee report, that committee member is entitled to at least three calendar days, before the day on which the committee report is filed, to file those views, in writing, with the committee clerk. When those views are timely filed, it is required that those views be included within and constitute a part of the report of that House committee on the measure or matter being reported.

The proposed new subparagraph (3) further provides that such report shall be printed in a single volume.

This single volume must include all supplemental, minority, and additional views which have been *submitted by the time of the filing of the report*, irrespective of whether any member of such House committee has given timely notice of his intent to file any such views with the committee clerk and thus, under the proposed new subparagraph (3), is entitled to three calendar days (or shorter period of time if he specifically requests a shorter period) in which to file those views.

It is further required that the single volume containing the report of the House committee shall have on its front cover a statement that supplemental, minority, or additional views, as the case may be, are included as a part of that report.

The proposed new subparagraph (3) of clause 27(d) of House Rule XI also contains a provision to the effect that if a member of a House committee, who intends to file supplemental, minority, or additional views with respect to a measure or matter approved and ordered reported by his committee, does

22. Pub. L. No. 91-510, 84 Stat. 1140 (Oct. 26, 1970).

23. H. Rept. No. 91-1215, 116 CONG. REC. 20276, 91st Cong. 2d Sess., June 17, 1970.

24. See Rule XI clause 2(l)(5), *House Rules and Manual* § 714 (1979).